



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2005

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2005-05527

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 226701.

The Allen Police Department (the "department"), which you represent, received a request for all information regarding a named individual from November 2004 to the present, including a 9-1-1 call occurring on or about December 14, 2004 and an arrest in early 2005 at a specified address. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that the submitted information includes an arrest warrant and supporting affidavit. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. Provided the submitted arrest warrant was issued, it must be released to the requestor without redactions pursuant to article 15.26. To the extent the submitted affidavit was presented to the magistrate in support of the issuance of the warrant, it also must be released without redactions pursuant to article 15.26.

¹We assume that, to the extent any additional responsive information existed on the date the department received this request, such information has been released to the requestor. If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses common law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). The request, in part, asks for all information held by the department concerning a named individual. We find that this request for unspecified law enforcement records requires the department to compile the criminal history of the individual, and thus implicates the individual’s right to privacy as contemplated in *Reporters Committee*. Accordingly, to the extent the department maintains any unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 in conjunction with common law privacy based on the holding in *Reporters Committee*.

In summary, if the submitted arrest warrant was issued, it must be released to the requestor without redactions pursuant to article 15.26 of the Code of Criminal Procedure. If the submitted affidavit was presented to the magistrate in support of the issuance of the arrest warrant, it also must also be released without redactions pursuant to article 15.26 of the Code of Criminal Procedure. To the extent that the department maintains unspecified law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, such information must be withheld under section 552.101 of the Government Code in conjunction common law privacy based on the holding in *Reporters Committee*.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

²As our ruling is dispositive, we need not address your remaining claims against disclosure.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/kl

Ref: ID# 226701

Enc. Submitted documents

c: Ms. Beth Simmons
2503 Velasquez Drive
Austin, Texas 78703
(w/o enclosures)